IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

RSA.No. 1073 of 2006()

AS.17/2002 of SUB COURT, VADAKARA
OS.91/2001 of MUNSIFF COURT, VADAKARA
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APPELLANT/APPELLANT/DEFENDANT:

PARACKAL MAMMI, D/O. AMMED HAJI,
AGED 53 YEARS, MANAGER, KAKKUNNATH MAPPILA L.P.
SCHOOL, PONMERIPARAMBIL P.O., BADAKARA,
KOZHIKODE DISTRICT.

BY ADV. SRI.A.T.ANILKUMAR
SRI.P.DALBI EMMANUEL

RESPONDENTS: RSPDTS./PLNTFS.1&2 & ADDL.PLNTFS.3TO9 (LRS.PLNTF.1)

1. CHEYYERI AVULLA HAJI, S/O. IBRAYI,
AGED 85 YEARS, SWASTHAM, `KAKKUNNATH',
PONMERI AMSOM, PARAMBIL DESOM, BADAKARA TALUK.
(DECEASED).

2. THEERTHAMKARA PATHUMMA,W/O.AVULLA HAJI,
SWASTHAM, AGED 71 YEARS, KAKKUNNATH,PONMERI AMSOM,
PARAMBIL DESOM, BADAKARA TALUK.

3. KAKKUNNATH AYISSA, AGED 54 YEARS,
PONMERI AMSOM, PARAMBIL DESOM, BADAKARA TALUK.

4. KAKKUNNATH IBRAYI, AGED 51 YEARS,
PONMERI AMSOM, PARAMBIL DESOM, BADAKARA TALUK.

5. KAKKUNNATH JAMALUDHEEN, AGED 47 YEARS,
PONMERI AMSOM, PARAMBIL DESOM, BADAKARA TALUK.

6. KAKKUNNATH KATHEESSA, AGED 45 YEARS,
PONMERI AMSOM, PARAMBIL DESOM, BADAKARA TALUK.

7. KAKKUNNATH YUSEF, AGED 43 YEARS,
PONMERI AMSOM, PARAMBIL DESOM, BADAKARA TALUK.

8. KAKKUNNATH MOOSA, AGED 41 YEARS,
PONMERI AMSOM, PARAMBIL DESOM, BADAKARA TALUK.

9. KAKKUNNATH NAFEESA, AGED 37 YEARS,
PONMERI AMSOM, PARAMBIL DESOM, BADAKARA TALUK.

BY ADV. SRI.N.L.KRISHNAMOORTHY FOR R2,R4 & R8.
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 29/11/2006,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J

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R.S.A. NO.1073 Of 2006

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Dated this the 29th day of November, 2006

J U D G M E N T

The 2nd defendant in the suit for recovery of possession on the strength of title, after termination of a licence, is the appellant. In an earlier round he asserted exclusive title to property and carried that matter up to this Court. It was found that he did not have title as he asserted, but he was a mere licencee under the plaintiffs. When he was later sued by the plaintiffs, in the suit from which this appeal arises, for recovery of possession after terminating the licence he claimed entitlement to the benefit of section 60(b) of the Indian Easements Act,1882, herein after, the 'Act', for short. According to him, he had put up permanent structures and therefore, being a licencee, the licence is irrevocable.

2. Under section 60(b), a licence becomes irrevocable, if the licencee has acting upon the licence, executed a work of a permanent character and incurred expenses for that execution. Therefore, one of the essential ingredients for claiming the protection of clause (b) of section 60 of the Act is that the work was executed acting upon the

licence.

3. The 2nd defendant-appellant, even according to him, had made the constructions in question even before the earlier suit. Without venturing into the question whether the construction was by him or not, in view of the plaintiff's contention to the contrary in that regard, such construction followed by his stand in the earlier suit that he had title to the property clearly establishes that no construction was made by him acting upon the licence, because his definite assertion then was that he had title to the property. He had not claimed in the earlier suit that he was a licencee. Obviously, he cannot now turn round to contend that he 'acted' on the licence. So much so, I do not find any error of law in the judgments of the court below warranting interference with the decree in the exercise of jurisdiction under Section 100 of the Code of Civil Procedure. The appeal fails.

4. Be that as it may, learned counsel for the appellant urges that the building in question is a school and the appellant may be permitted to continue in occupation till the end of the current academic year.

In the result, this second appeal is dismissed affirming the

impugned decree, however directing that if the appellant deposits the entire amounts covered by the impugned decree until today and further amounts at a rate of 1,500/- per month till 30.04.07, in a lump, before the executing court within a period of three weeks from today and files an affidavit within a period of 2 weeks, unconditionaly undertaking to vacate on or before 1.05.07, he shall be permitted to continue to keep premises until that day. If any of the conditions is faulted, he will be liable to be dispossessed forthwith.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

SJ